



Legislative Audit Division

State of Montana

Report to the Legislature

December 2005

Performance Audit

Oversight of Special Education Services

**Special Education Division
Office of Public Instruction**

This report contains information regarding compliance monitoring of special education services in Montana. Recommendations for strengthening oversight include:

- ▶ Ensuring the appropriateness of all school district eligibility determinations.
- ▶ Developing standards for determining school district compliance.
- ▶ Designating a supervisor with responsibility for oversight of day-to-day activities.
- ▶ Mandating use of a standard set of forms statewide.

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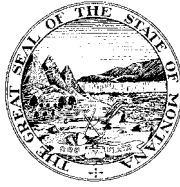
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December 2005

The Legislative Audit Committee
of the Montana State Legislature:

This is our performance audit of oversight of Special Education Services in Montana. Special education is defined as specially designed instruction to meet the unique needs of a child with a disability, at no cost to the parents or guardians. The Office of Public Instruction (OPI) has oversight responsibility for special education services in Montana.

Our report contains information regarding compliance monitoring of special education services in Montana. We make recommendations for strengthening oversight including reviewing and verifying school district eligibility determinations, developing standards for determining school district compliance, mandating use of a standardized set of forms statewide, and designating a supervisor with responsibility for oversight of day to-day activities. A response from OPI officials is contained at the end of the report.

We wish to express our appreciation to all OPI personnel, as well as school district personnel, for their cooperation and assistance during the audit.

Respectfully submitted,

/s/ Scott A. Seacat

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Legislative Auditor

Legislative Audit Division

Performance Audit

Oversight of Special Education Services

**Special Education Division
Office of Public Instruction**

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Introduction

The Legislative Audit Committee requested a performance audit of the oversight of special education classification and placement processes by the Office of Public Instruction (OPI). The audit focused on program criteria and monitoring controls related to classifying and providing special education services to children with disabilities. This audit report contains recommendations for further strengthening OPI's oversight role of the delivery of special education services.

Background

The Individuals with Disabilities Education Act (IDEA) (federal law) contains the requirements that govern special education. According to section 20-7-403, MCA, the Superintendent of Public Instruction shall supervise and coordinate the conduct of special education in the state by establishing a planned and coordinated program. The Special Education Division within OPI is assigned this responsibility. Compliance monitoring is OPI's main oversight role in the delivery of special education. Division personnel review special education student records at school district facilities to determine compliance with federal and state laws and rules. The compliance monitoring process can be divided into three general areas: 1) pre-site activities, 2) on-site activities, and 3) post-site activities.

Pre-Site Compliance Monitoring

The two main activities OPI personnel conduct in preparing for on-site compliance monitoring are scheduling the visit and selecting a sample of student records to review. OPI developed a five-year cycle for compliance monitoring of school districts. Each year, school districts on the cycle for that year are contacted to schedule an on-site visit. Prior to the on-site visit, OPI personnel obtain information on special education student populations for each school district. According to policy, monitoring teams are to conduct random reviews of individual student records to ensure compliance with IDEA.

OPI's Sample Selection Procedures

We noted OPI personnel use different sampling procedures that serve different purposes, none of which are random. In addition, OPI staff are not clear on the minimum number of records to review. If the purpose of sampling is to ensure compliance with IDEA, the sample selected should be adequate enough to ensure it represents the entire special education population and minimize the risk of concluding school district processes are compliant when they are not. While policy indicates a minimum of

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one record per district will be reviewed, there is no criteria of how many records should be sampled to provide adequate representation. The smaller the number of records reviewed, the higher the risk for not identifying noncompliance and not meeting the purpose of IDEA.

Schools are Provided Prior Notification of OPI's Sample

Once a sample is selected for review, the list of student records is provided to the school district in advance. For several of the compliance monitoring reviews we observed, teachers were provided an opportunity to get their records in order prior to OPI personnel arriving. The purpose of monitoring is to review documentation with an overall goal of improving school district processes and ensuring compliance. While getting records in order is beneficial, providing the list of student records to school districts in advance may only get the records on the sample list in order. Thus, current procedures do not provide for a true representation of school district processes. This limits the ability of OPI to provide input and technical assistance, as well as impacting school district personnel's opportunity for gaining knowledge on correct practices.

Follow-Up On Previous Findings

A report is prepared for each on-site monitoring review detailing the findings of the OPI review, including required corrective action and technical assistance. Pre-site activities do not include formal procedures for consideration and follow-up on previous compliance monitoring findings or evaluation of the effectiveness of technical assistance. There is no written policy or guidance directing staff to review previous findings. The sampling process does not include a comparison of previous findings to current findings to determine if noncompliance is continuing or trends exist.

Additional Guidance is Needed

We believe staff needs additional guidance. OPI managers need to define the purpose of pre-site sample selection, and then revise policy to ensure record samples are adequate enough to represent the entire population and the requirements of IDEA are met. The sample selection process should also be modified to exclude or further control the pre-selection of records. This should provide OPI more assurance student records reviewed are representative of all records and district practices.

On-Site Compliance Monitoring

A key component of special education is determination of eligibility. In order to be eligible to receive special education services, a child must be a child with a disability. OPI staff review the student record to ensure eligibility forms are contained in the student record and proper procedures were followed. The OPI monitoring process does not consistently ensure proper determination of eligibility. Federal and state laws and rules provide requirements for OPI and school districts regarding determination of eligibility. While OPI monitoring specialists review student records for documentation related to disability criteria and need for special education, the process does not always ensure disability criteria were met.

Without assurance of proper determination of eligibility, there is increased potential for children to be improperly served by special education. While it is the responsibility of the school district to determine eligibility, according to administrative rule, all persons who can assist in identifying the disability and determine services to meet the needs of a child shall participate in the placement process. This rule, along with the mandate for OPI to ensure compliance, illustrates OPI's responsibility for ensuring proper determination of eligibility. We are not recommending OPI "second-guess" school district determinations by deeming children eligible or ineligible; rather, OPI should review school district eligibility determinations to ensure the process and decision-making are based on sound practice and accepted procedures, and followed through to conclusion.

Review of Records for Children Determined Ineligible

If a child is referred for evaluation and the school district determines the child is not a child with a disability and/or is not in need of special education and related services, an IEP is not developed and the child does not receive services. OPI's current monitoring process does not include a review of records for children who were referred for special education services but were determined ineligible.

We believe review of these records should be an integral part of special education oversight. Without this review, there is increased potential for eligible children to not be properly identified and receive special education services. If children are not properly identified and services

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provided, the school district and OPI are in noncompliance with IDEA. While there are procedural safeguards in place to help ensure rights are protected, an OPI review will strengthen oversight by providing a secondary check on appropriateness of decision-making.

Post-Site Compliance Monitoring

After conducting on-site reviews of student records, OPI personnel compile monitoring results, make compliance decisions, and inform school districts of any required actions. A report is sent to school district administrators outlining positive aspects of the program, required corrective actions, and suggestions for technical assistance and training. Post-site monitoring activities are conducted in Helena.

Determining School District Compliance

OPI monitoring specialists use the student record review form to document their compliance review. The team leader is responsible for compiling the results of the compliance review. After compiling results, OPI staff schedule a decision-making meeting referred to as a “debriefing.” The lead monitoring specialist presents findings from compliance reviews at the division debriefing and the group provides input on whether or not the school district is in compliance. The lead monitoring specialist then prepares the monitoring report for the school district using input from the division debriefing.

Methods Used to Compile Results Vary

Methods for compiling data from student record review forms vary from staff to staff. Variations in methods used for compiling data increase the potential for inconsistent decision-making and inaccurate results. Inconsistency in the process can have negative impacts such as confusing school district personnel on what constitutes noncompliance.

Compliance Standards Do Not Exist

Once monitoring results are compiled, staff must determine school district compliance. There are no established standards to help ensure consistent decision-making. While current policy indicates a division debriefing will discuss whether or not the frequency of concerns is systemic, there is no standard on what constitutes a systemic issue. The purpose of the division debriefing is to provide consistency in division decision-making. However, the general process involves informal discussion and recollection of past decisions.

The process can be strengthened by establishing formal reference points for use in discussions of compliance, including creation of policies to allow for exceptions. If OPI monitoring specialists identify noncompliance or question a school district's eligibility determination, policy on actions to take should be clear in order to help guide OPI personnel.

Autonomy Exists in the Monitoring Process

During our audit, we noted OPI personnel operate autonomously and supervision is limited. In addition, policies and procedures to guide OPI personnel during the monitoring process are limited. As a result, there are variations in procedures used by staff for compliance monitoring.

More guidance, in the form of supervision, will help improve consistency. Various recommendations in this report address specific development of policy. However, establishing policies and procedures is only one step of the process. There must be oversight of ongoing activities to ensure policies are being followed. Having policies and making sure they are followed will help ensure consistency in operations.

Special Education Documentation

Documentation is an important part of the monitoring process, both documentation maintained in student records, as well as documentation maintained by OPI. Student records contain numerous documents including referrals, assessments, evaluation plans, child study team reports, and individualized education programs. OPI has forms available for use by school districts, as well as forms to document compliance monitoring. We noted three areas where we believe changes will help strengthen the program.

- ▶ Standardization of Forms - While federal and state regulations require specific actions to be completed throughout the process, they do not require use of specific forms. As a result, there is no consistency statewide in use of forms. We believe mandating a standard set of special education forms statewide is a logical next step.
- ▶ Student Record Review Form - OPI personnel created a form to document the compliance review of student records called the student record review form. However, the student record review form does not provide clear direction to OPI personnel on proper completion. OPI personnel need guidance for completing the student record review form.

Report Summary

- ▶ Review of Existing Evaluation Date - According to federal law, whenever a school district meets to determine if a child is or continues to be a child with a disability and in need of special education and related services, they must review any existing evaluation data as part of the process. Based on this federal requirement, OPI personnel developed a form to document the review. However, federal and state law and rules do not require a specific form, only the review. We believe additional staff guidance on reviewing records should be developed and the form eliminated.

Chapter I – Audit Introduction

Introduction

The Legislative Audit Committee requested a performance audit of the oversight of special education classification and placement processes by the Office of Public Instruction (OPI). The audit focused on program criteria and monitoring controls related to classifying and providing special education services to children with disabilities.

Audit Objectives

Based on preliminary audit work, we developed the following audit objectives:

- ▶ Determine what controls exist regarding OPI oversight of special education activities.
- ▶ Determine if OPI control procedures are implemented and how these controls are functioning.

Audit Scope

Audit work included analysis of laws, rules, and policies related to special education, interviews with OPI and school district personnel, observations of OPI staff activities, review of student records, and review of reports and other special education information. The period of time covered during our audit included the 2003-04 and 2004-05 school years.

Specifically, we conducted the following audit work:

- ▶ Analysis of the federal Individuals with Disabilities Education Act (IDEA).
- ▶ Analysis of associated state laws, rules, and policies.
- ▶ Interviews of OPI personnel with special education responsibilities.
- ▶ Observations of four OPI on-site monitoring reviews.
- ▶ Observations of six OPI decision-making meetings.
- ▶ Observations of OPI technical assistance and training meetings.
- ▶ Observation of an Advisory Panel meeting.
- ▶ Review of various OPI forms and guides.
- ▶ Review of OPI reports and files related to special education oversight.

Chapter I – Audit Introduction

- ▶ Review of 68 student records from 12 school districts.
- ▶ Interviews with school district administrators and special education directors.
- ▶ Distribution of a survey to Montana school districts, which resulted in 153 responses from special education instructors, service providers, and administrators.

Delivery of services is the responsibility of Montana school districts. However, our audit was only of OPI; we did not audit school districts.

Strengthening OPI Oversight

According to section 20-7-403, MCA, the Superintendent of Public Instruction shall supervise and coordinate the conduct of special education in the state by establishing a planned and coordinated program. Administrative rules indicate OPI shall provide an ongoing and systematic monitoring process to ensure compliance with laws and rules. OPI has established a monitoring system including review of school district policies and procedures, an early assistance program to help resolve problems, procedures for formal complaints, mediation and due process hearings, a compliance monitoring process, and a newly developed focused intervention process based on selected performance indicators.

The general opinion of OPI is that its program is functioning according to federal regulations. Even though OPI's program is federally funded, there are also state and local funds used for delivery of special education services in Montana. In order to ensure the concepts of IDEA are met, we believe OPI should strengthen its regulatory functions by increasing consistency of practices. This audit report contains recommendations for further strengthening OPI's oversight role of the delivery of special education services.

Report Organization

The remainder of this report includes a background chapter and four chapters detailing our findings and recommendations.

Chapter II – Background

Introduction

The Superintendent of Public Instruction is an elected official authorized by Article VI, Section 1, of the Montana Constitution. The Superintendent of Public Instruction is responsible for the general supervision of K-12 public schools and districts within Montana. The Office of Public Instruction (OPI) provides services to Montana's school-age children (3-21) and teachers in over 400 school districts.

OPI has General Supervision Authority

According to section 20-7-403, MCA, the Superintendent of Public Instruction shall supervise and coordinate the conduct of special education in the state. The Special Education Division within OPI is assigned this responsibility. Division personnel have established a general supervision system including various components and activities.

The Individuals with Disabilities Education Act

Federal law contains the requirements that govern special education. The Individuals with Disabilities Education Act (IDEA) was enacted by Congress on June 4, 1997 (Title 20, Chapter 33, U.S. Code). The purposes of IDEA are to:

- ▶ Ensure all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;
- ▶ Ensure the rights of children with disabilities and parents of such children are protected;
- ▶ Assist states, localities, educational service agencies, and federal agencies in providing education for all children with disabilities;
- ▶ Assess, and ensure the effectiveness of efforts to educate children with disabilities.

While Montana has laws and rules related to special education, in general, they reflect federal laws and rules or provide more detailed guidance in specific areas.

What is Special Education?

Section 20-7-401, MCA, defines "special education" as specially designed instruction to meet the unique needs of a child with a

Chapter II - Background

disability, at no cost to the parents or guardians, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education. This law defines a "child with a disability" as a child evaluated in accordance with the regulations of IDEA as having:

- cognitive delay,
- hearing impairment, including deafness,
- speech or language impairment,
- visual impairment, including blindness,
- emotional disturbance,
- orthopedic impairment,
- autism,
- traumatic brain injury,
- other health impairments,
- deaf-blindness,
- multiple disabilities, or
- specific learning disabilities.

This definition further requires that because of those impairments, the child needs special education and related services. A disability alone does not qualify a child for special education; a child with a disability must need special education and related services in order to qualify.

How Are Special Education Services Delivered?

School districts are responsible for delivery of special education services. A child with a disability must be identified, referred, and evaluated, and if eligible, an educational plan must be developed and implemented. The following section provides an overview of the delivery of special education.

Child Identification

The first step in the process is identifying a child who may have a disability. IDEA requires each state to ensure all children who have a disability and need special education and related services are identified, located, and evaluated. A child with a potential disability may be identified through parental concern, medical professionals, early intervention by Department of Public Health and Human

Services staff, Head Start programs, preschool activities, or school district screening procedures. Screening procedures address a child's status with respect to general health, hearing and vision, speech and language development, general development, fine and gross motor skills, or behavior. Once identified, the child is referred to the school district for a comprehensive educational evaluation. The referral must indicate the specific reasons why an evaluation is needed and any areas of concern.

OPI has oversight responsibility of school district activities for children who are three years of age or older. Division staff review school district child identification policies and procedures to ensure adherence to IDEA requirements.

Comprehensive Educational Evaluation

The referral starts the process of collecting information to determine whether a comprehensive educational evaluation is necessary and the types of assessments needed. Following receipt of written parental permission to evaluate, a team of professionals, including the parents of the child, conducts the evaluation. The team is called the Child Study Team (CST). The CST prepares an evaluation plan outlining which evaluations, assessments and observations will be necessary to determine whether the child has a disability and needs special education and related services. If a child is determined to be a child with a disability and in need of special education and related services, an individualized education program must be developed.

OPI's oversight role involves review of student records maintained in school districts to determine compliance with federal and state laws and rules.

Individualized Education Program

The individualized education program (IEP) is the main plan of action for a child with a disability receiving special education. In Montana, each IEP is developed and implemented by a team of professionals from the child's school, including the parents of the child, called the IEP team. An IEP meeting must be conducted within 30 days of determining eligibility. The IEP includes present levels of educational performance, measurable annual goals, special

Chapter II - Background

education and related services to be provided, the extent of participation in the regular education classroom, and how progress toward annual goals will be measured and reported to the parents. The IEP is in effect at the beginning of the school year and has a one-year duration.

OPI's oversight role is compliance monitoring. Division personnel review IEP documentation to determine compliance with federal and state laws and rules. In addition to this on-site review, personnel review school district policies and procedures, and respond to complaints and requests for assistance.

Ongoing Review

The IEP team meets at least annually to review and revise the IEP as necessary. This process continues until the child no longer needs special education and related services, graduates from high school, or turns 21 years of age. If the child leaves the school district, the school district where the child moves to is then responsible for determining eligibility and providing special education and related services. The CST is required to meet every three years to determine if a child continues to be a child with a disability and in need of special education and related services.

OPI staff reviews student record documentation to ensure compliance with IDEA, as well as responding to complaints and requests for assistance. In addition, the Special Education Advisory Panel advises OPI on development and implementation of regulations regarding the education of and services for children with disabilities.

Compliance Monitoring is OPI's Main Role

Compliance monitoring is OPI's main oversight role in the delivery of special education. Division personnel review special education student records at school district facilities to determine compliance with federal and state laws and rules. The compliance monitoring process can be divided into three general areas: 1) pre-site activities, 2) on-site activities, and 3) post-site activities. OPI monitoring specialists conduct pre-site activities to prepare for on-site compliance monitoring visits by scheduling the visit and selecting a

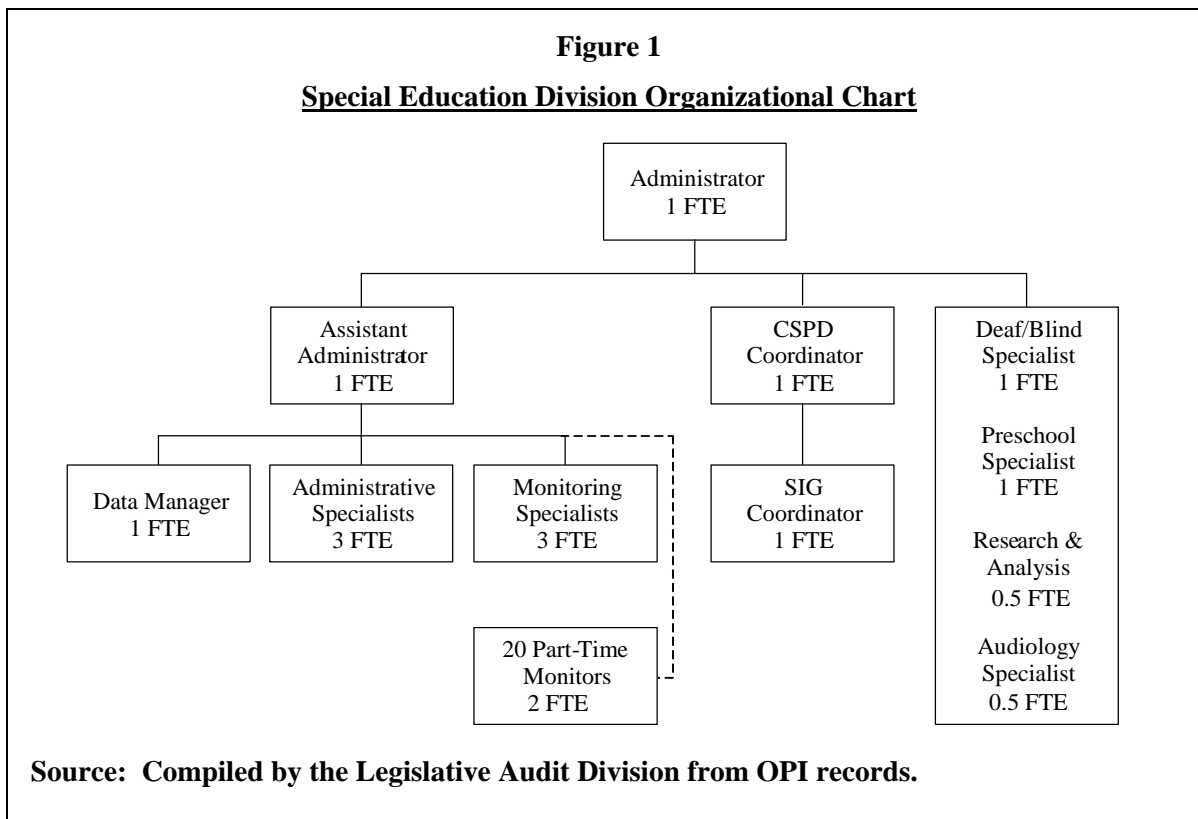
sample of student records to review. The monitoring specialists then travel to school district facilities to review student records and discuss the findings of their reviews with special education administrators, teachers, and service providers. Finally, OPI monitoring specialists compile results from the on-site visit, determine compliance, and notify school districts of any required actions.

Special Education Division Staffing

The Special Education Division has 16 FTE including an administrator, assistant administrator, and various specialists. The division uses 20 part-time monitoring specialists to assist with on-site visits. These part-time specialists, who have knowledge in the special education field, assist OPI staff as requested, and are located throughout Montana. One individual from the Legal Division is also directly involved with compliance monitoring. In addition to compliance monitoring, these personnel have other responsibilities related to OPI's general supervision, including providing technical assistance to schools, both in general and in specific areas such as preschool, deaf-blindness, autism, etc.

The other main function of the division is the Comprehensive System of Personnel Development (CSPD), which includes three FTE. This program ensures all education personnel are adequately prepared and receive continuing education. The CSPD program includes the State Improvement Grant (SIG), which targets the challenges Montana schools have in the areas of school district personnel preparation, recruitment, retention, and professional development. The following figure provides a division organizational chart.

Chapter II - Background



Special Education Division Expenditures

Currently, Montana annual special education expenditures from federal, state, and local funding sources are approaching \$94 million. Division operations are almost entirely funded with federal funds. The following table provides division expenditures by fund type for fiscal year 2004-05.

Table 1

Special Education Division Expenditures by Fund Type
(FY 2004-05)

	IDEA	General Fund
Personal Services	\$1,056,553	\$28,612
Operating Expenses	\$1,243,618	\$324,896
Equipment	\$1,452	\$0
TOTAL	\$2,301,623	\$353,508

Source: Compiled by the Legislative Audit Division from OPI records.

The following four chapters discuss OPI's compliance monitoring process and our recommendations for strengthening controls. The first three chapters are separated into the three general areas of the process: 1) pre-site activities, 2) on-site activities, and 3) post-site activities. The fourth chapter discusses documentation.

Chapter III - Pre-Site Compliance Monitoring Activities

Overview

This chapter addresses pre-site compliance monitoring activities conducted by Office of Public Instruction (OPI) staff prior to going to school district facilities to review student records. We recommend changes in policy and procedures to help strengthen controls regarding pre-site activities.

Introduction

The two main activities OPI personnel conduct in preparing for on-site compliance monitoring are scheduling the visit and selecting a sample of student records to review. OPI developed a five-year cycle for compliance monitoring of school districts. Each year, school districts on the cycle for that year are contacted to schedule an on-site visit. Prior to the on-site visit, OPI personnel obtain information on special education student populations for each school district. OPI maintains general information for each student receiving special education and related services (Child Count). According to policy, monitoring teams are to conduct random reviews of individual student records to ensure compliance with the Individuals with Disabilities Education Act (IDEA).

OPI's Sample Selection Procedures

The first step in conducting random reviews of student records is to select a sample of records. Sampling is the process of selecting part of a population to determine parameters and characteristics of the whole population. Sampling may be random (statistical) or judgmental (non-statistical). With random sampling, every member of the population is equally likely to be in the sample, so the sampled items are more likely to represent the entire population. Thus, findings from sampled items can be used to “project” to the entire population. Judgmental sampling is the use of evaluator judgment when determining sample size. Generalizing results from judgmental sampling to the entire population is often inappropriate. However, judgmental sampling can be an effective time saver when evaluators know from prior experience where problems are most likely to develop.

Chapter III – Pre-Site Compliance Monitoring Activities

Personnel Use Different Procedures

We noted OPI personnel use different sampling procedures that serve different purposes, none of which are random. OPI personnel select a sample of student records prior to each on-site compliance monitoring review. One OPI staff person, designated as the lead monitoring specialist, completes the sample selection. We talked with all five lead monitoring specialists regarding procedures used for selecting a sample of student records and noted variations in how samples are selected and the minimum number of records to review. Procedures used include:

- ▶ Reviewing the most current records.
- ▶ Using the Child Count to select a “semi-random” sample.
- ▶ Selecting the sample from the Child Count using a percentage of disabilities (stratifying).
- ▶ Selecting records from the students with unique concerns (SWUC) form.
- ▶ Letting the teacher select the sample of records.
- ▶ Asking the teacher to provide records they have questions about or have difficulties with.

Each of these methods serves different purposes. Whatever method is used, the resulting sample selection is not random. Policy is not being followed.

We conducted a survey of school district personnel and survey respondents were split on record selection responsibility at about 29 percent agreeing it was the school district's responsibility and about 28 percent believing it was OPI's responsibility. About 18 percent were neutral, and 25 percent did not know whose responsibility record selection was. Based on these results, OPI's sample selection processes are not universally understood.

Some lead monitoring specialists use special education population data to generate statistics for the school district to be monitored. For example, one lead monitoring specialist generates a chart comparing disability categories between the school district's special education population and statewide totals to help identify potential "red flags."

Chapter III – Pre-Site Compliance Monitoring Activities

Finally, OPI staff are not clear on the minimum number of records to review. Variations included:

- ▶ 1 record per district
- ▶ 2 records per district
- ▶ 2 records per teacher (informal)
- ▶ 1 to 3 records per teacher

If the purpose of sampling is to ensure compliance with IDEA, the sample selected should be adequate enough to ensure it represents the entire special education population and minimize the risk of concluding school district processes are compliant when they are not.

The Adequacy Of Representation Is Unclear

While policy indicates a minimum of one record per district will be reviewed, there is no criteria of how many records should be sampled to provide adequate representation. OPI's central file does not clearly document all actions taken by OPI personnel regarding how the sample was selected and which records were selected for review. The central file does not contain documentation of the representative sample for each monitoring review. The central file usually contains the number of files reviewed, but it does not put this into perspective by comparing it to the district's total special education population.

The purpose of reviewing files is to ensure compliance, but it is unclear if this is being met. The smaller the number of records reviewed, the higher the risk for not identifying noncompliance and not meeting the purpose of IDEA.

Schools are Provided Prior Notification of OPI's Sample

Once a sample is selected for review, the list of student records is provided to the school district in advance. For several of the compliance monitoring reviews we observed, teachers were provided an opportunity to get their records in order prior to OPI personnel arriving. The purpose of monitoring is to review documentation with an overall goal of improving school district processes and ensuring compliance. While getting records in order is beneficial, providing the list of student records to school districts in advance may only get

Chapter III – Pre-Site Compliance Monitoring Activities

the records on the sample list in order. Thus, current procedures do not provide for a true representation of school district processes. This limits the ability of OPI to provide input and technical assistance, as well as impacting school district personnel's opportunity for gaining knowledge on correct practices.

Follow-up on Previous Findings

A report is prepared for each on-site monitoring review detailing the findings of the OPI review, including required corrective action and technical assistance. The report is distributed to school district administration with timeframes for completing required actions. Once required actions are completed, OPI closes the review. Our audit identified that pre-site activities do not include formal procedures for consideration and follow-up on previous compliance monitoring findings or evaluation of the effectiveness of technical assistance.

Federal Review Cites Follow-Up Deficiencies

The Office of Special Education Programs (OSEP) reviews state special education programs on an ongoing basis, including OPI's program. In the report for the OSEP review of OPI special education operations (1999), it states "aside from receiving written documentation, there is no process for follow-up once corrective actions have been approved." As a result, Montana was cited for noncompliance because it does not ensure that deficiencies identified during monitoring are corrected. OPI responded to this finding of noncompliance, which was approved by OSEP.

There is no written policy or guidance directing staff to review previous findings. The sampling process does not include a comparison of previous findings to current findings to determine if noncompliance is continuing or trends exist. These circumstances have evolved into a methodology that does not allow OPI to comprehensively evaluate school district operations on a long-term basis.

Additional Guidance Is Needed

One reason for the variations in methodologies is a lack of detailed policy directing OPI personnel on sample selection procedures. Another reason is OPI monitoring specialists operate autonomously;

Chapter III – Pre-Site Compliance Monitoring Activities

there is limited supervisory oversight and review of activities, which is discussed in Chapter V. Staff creates their own methodologies based on on-the-job experiences.

We believe staff needs additional guidance. OPI managers need to define the purpose of pre-site sample selection, and then revise policy to ensure record samples are adequate enough to represent the entire population and the requirements of IDEA are met. The sample selection process should also be modified to exclude or further control the pre-selection of records. This should provide OPI more assurance student records reviewed are representative of all records and district practices.

Recommendation #1

We recommend OPI:

- A. Establish specific details of sample selection to help ensure the requirements of IDEA are met, including purpose, coverage, and types of records to review.**
- B. Establish controls over pre-selection of student records.**
- C. Incorporate previous monitoring findings and district comparisons into the sampling process to help assess current compliance.**

Chapter IV – On-Site Compliance Monitoring Activities

Overview

A key component of special education is determination of eligibility. Office of Public Instruction (OPI) compliance monitoring does not always ensure compliance with federal and state laws and rules regarding eligibility. Changes to the on-site compliance monitoring process will help strengthen oversight of the delivery of special education services.

Introduction

School districts are responsible for creating and maintaining student records. OPI personnel review student records at school district facilities to determine compliance with regulations. Prior to arrival of OPI monitoring specialists, school district personnel gather student records. These student records are delivered to a central location at the school district; or, in some cases, OPI monitoring specialists review student records in the classroom of the instructor or service provider. OPI monitoring specialists use an in-house form to document the compliance review. Once completed, the student records are returned to the instructor or service provider. In some instances, an exit meeting is held with school district officials to provide input on overall findings. The remainder of the process is completed at OPI's main office.

Eligibility Determination

In order to be eligible to receive special education services, a child must be a child with a disability. A child with a disability is a child who is evaluated according to regulations and meets one or more disability categories, and because of the disability needs special education and related services. Each disability category has specific criteria that must be met in order to be eligible. The Child Study Team (CST) determines eligibility using information obtained from assessments and observations of the child. OPI staff review the student record to ensure eligibility forms are contained in the student record and proper procedures were followed. The OPI monitoring process does not consistently ensure proper determination of eligibility.

Chapter IV – On-Site Compliance Monitoring Activities

The Process Does Not Always Ensure Criteria are Met

Federal and state laws and rules provide requirements for OPI and school districts regarding determination of eligibility. While OPI monitoring specialists review student records for documentation related to disability criteria and need for special education, the process does not always ensure disability criteria were met. According to management, OPI monitoring specialists must determine if there is sufficient documentation in the record to establish the student is a child with a disability and why the student needs special education. If there is reason to believe not all criteria were met, the district is supposed to be directed to reconvene the CST. However, we noted instances where the process was not followed.

OPI Monitoring Specialists Question Some Eligibility Determinations

We noted 4 of the 68 records reviewed in three different school districts where eligibility was questionable. For example, one record had documentation of eligibility, but an OPI monitoring specialist indicated not all the criteria were met. We also found other examples where there was some question as to the eligibility of the student. In 5 of the 15 school districts in our sample, we noted the use of a term called "monitoring status." This term refers to a child who is placed in special education to monitor their progress. However, the child may not meet the eligibility requirements of federal and state laws and rules. For example, one student was in general education 100 percent of the time, with no time in special education, and an OPI monitoring specialist said there were no services documented in the record. When the OPI monitoring specialist questioned the teacher about the situation, the teacher said the student was on "monitoring status." The OPI monitoring specialist told the teacher to have the CST team decide if the child really needs special education. If not, close the individualized education program (IEP), and if so, rewrite the IEP to identify and address the student's needs. There was no report to the district on this issue, so the process did not ensure the actions were completed. According to division management, the proper course of action when OPI monitoring specialists question eligibility is to redirect school districts to ensure the record is complete and consistent with criteria.

Chapter IV – On-Site Compliance Monitoring Activities

However, the examples noted during our audit indicate the process does not ensure this occurs.

Without assurance of proper determination of eligibility, there is increased potential for children to be improperly served by special education. A child improperly served by special education unnecessarily increases program expenditures resulting in less funding available to eligible children. Based on fiscal year 2003-04 expenditures, on average, it costs an additional \$4,800 annually to educate a child served in special education as compared to a child only served in general education.

OPI Should Ensure Appropriateness of All Eligibility Determinations

While it is the responsibility of the CST team to determine eligibility, according to section 10.60.103, ARM, in order that a free appropriate public education is provided to all children, all persons who can assist in identifying the disability and determine services to meet the needs of a child shall participate in the placement process. This rule, along with the mandate for OPI to ensure compliance, illustrates OPI's responsibility for ensuring proper determination of eligibility. We are not recommending OPI "second-guess" school district determinations by deeming children eligible or ineligible; rather, OPI should review school district eligibility determinations to ensure the process and decision-making are based on sound practice and accepted procedures, and followed through to conclusion.

Recommendation #2

We recommend OPI ensure the appropriateness of all school district eligibility determinations.

Review of Records for Children Determined Ineligible

If a child is referred for evaluation and the CST determines the child is not a child with a disability and/or is not in need of special education and related services, an IEP is not developed and the child does not receive services. OPI's current monitoring process does not include a review of records for children who were referred for special education services but were determined ineligible.

Chapter IV – On-Site Compliance Monitoring Activities

We believe review of these records should be an integral part of special education oversight. In addition to those regulations noted in the previous section, Title 34, part 300.121, CFR, says each state must have in effect a policy that ensures that all children with disabilities aged 3 through 21 residing in the state have the right to a free appropriate public education (FAPE). Section 10.16.3121, ARM, also includes this requirement for ages 3 through 18 inclusive. Without this review, there is increased potential for eligible children to not be properly identified and receive special education services. If children are not properly identified and services provided, FAPE is not assured and the school district and OPI are in noncompliance with IDEA.

There are procedural safeguards in place to help ensure rights are protected. Parents of children referred for evaluation are provided a copy of their rights and complaint and due process procedures. However, if parents do not understand their rights or do not pursue procedural safeguards, children may not receive proper eligibility determinations. OPI has not included a review of records for ineligible children because management believed the procedural safeguards were sufficient. We believe this review will strengthen oversight by providing a secondary check on appropriateness of decision-making.

Recommendation #3

As part of the on-site monitoring process, we recommend OPI determine if proper procedures were followed and criteria addressed for school district eligibility determinations for ineligible children.

Chapter V - Post-Site Compliance Monitoring Activities

Overview

Post-site compliance monitoring activities include decision-making to determine school district compliance. To increase consistency of school district monitoring and improve the process, we recommend increased staff guidance in the form of policies and supervision.

Introduction

After conducting on-site reviews of student records, Office of Public Instruction (OPI) personnel compile monitoring results, make compliance decisions, and inform school districts of any required actions. A report, in the form of a letter, is sent to school district administrators outlining positive aspects of the program, required corrective actions, and suggestions for technical assistance and training. Post-site monitoring activities are conducted in Helena.

Determining School District Compliance

OPI monitoring specialists use the student record review form to document their compliance review. Each member of the compliance monitoring team completes a record review form for each student record reviewed. The team leader is then responsible for compiling the results of the compliance review.

After compiling results from on-site compliance reviews, OPI staff schedule a decision-making meeting. This decision-making meeting is held in Helena and is referred to by OPI personnel as a “debriefing.” The lead monitoring specialist presents findings from compliance reviews at the division debriefing and the group provides input on whether or not the school district is in compliance. The lead monitoring specialist then prepares the monitoring report for the school district using input from the division debriefing. The monitoring report contains any corrective action plans (CAP) the school district is required to implement to address identified noncompliance, as well as suggestions for technical assistance and training. If OPI monitoring specialists identify individual student records that do not have complete documentation indicating the child is receiving a free appropriate public education, a memorandum is issued to the school district detailing required actions. The

Chapter V - Post-Site Compliance Monitoring Activities

monitoring report is closed once the school district completes all required actions.

Methods Used To Compile Results Vary

Methods for compiling data from student record review forms vary from staff to staff. Five OPI staff act as lead monitoring specialists for the Special Education Division and we noted five different methods used to compile information from on-site reviews. The various methods of documentation vary from detailed to nothing, and there is inconsistency within individual methods of documentation.

Increased Potential for Inconsistency and Inaccuracy

OPI personnel created the student record review form to document compliance. Variations in methods used for compiling data increase the potential for inconsistent decision-making and inaccurate results. Inconsistency in the process can have negative impacts such as confusing school district personnel on what constitutes noncompliance. Lack of details limits OPI's ability for long-term analysis because comparisons between monitoring cycles are impacted.

If documentation does not exist, or is not clear, it becomes increasingly more difficult to follow-up on past issues and analyze the effectiveness of actions. These situations increase the possibility of children with disabilities not receiving proper special education and related services, or serving children in special education when services are not needed. Our review of past monitoring reports did note inconsistencies in issuance of corrective action plans and technical assistance. In addition, some methods used by OPI monitoring specialists increase the possibility of inaccurate data compilation.

Compliance Standards Do Not Exist

Once monitoring results are compiled, staff must determine school district compliance. There are no established standards to help ensure consistent decision-making. For example, at a recent division debriefing, one identified issue had 6 records out of 25 (24 percent) noted as an issue, but the group said the issue was not systemic, so a CAP was not issued to the school district. Another issue had 12 records out of 51 (23.5 percent) and a CAP was issued for that item.

Chapter V - Post-Site Compliance Monitoring Activities

While current policy indicates a division debriefing will discuss whether or not the frequency of concerns is systemic, there is no standard on what constitutes a systemic issue. Written policy only indicates "a concern is systemic when a large proportion of record reviews indicate a pattern of noncompliance." According to division documentation, "for districts that have only one teacher, it may be necessary to review two records to determine systemic issues."

The Debriefing is Informal and Relies On Memory

The purpose of the division debriefing is to provide consistency in division decision-making. At a division debriefing, the lead monitoring specialist updates OPI personnel on the findings from the on-site monitoring visit. However, the general process involves informal discussion and recollection of past decisions. There are no detailed policies to guide personnel. In addition, documentation is not provided consistently to meeting participants.

Attendance at division debriefings is not mandatory. If someone forgets the details of a monitoring visit or is absent from a division debriefing, OPI may issue less than complete corrective action plans, or noncompliance may not be identified and would then go unresolved.

OPI personnel said previous debriefing methods included drafting the monitoring report for discussion at the debriefing. However, staff indicated this method turned into a "word-smithing" session, so it was discontinued. Currently, there is no criteria to guide staff on how to identify and act upon noncompliance.

Current Methods Include Informal Thresholds

According to division management, OPI personnel use an "X out of Y" method of analysis to determine compliance. Lead monitoring specialists determine how many problems were noted (X) out of the total number of records (Y) reviewed. Monitoring staff then discusses the analysis at a debriefing, and using discretion in recognizing school district accomplishments in working toward compliance, determine if corrective actions are necessary.

Chapter V - Post-Site Compliance Monitoring Activities

The process can be strengthened by establishing formal reference points for use in discussions of compliance, including creation of policies to allow for exceptions. If OPI monitoring specialists identify noncompliance or question a school district's eligibility determination, policy on actions to take should be clear in order to help guide OPI personnel.

Recommendation #4

We recommend OPI:

- A. Formalize the division debriefing meeting.**
- B. Develop a standardized methodology for compiling results of on-site record reviews.**
- C. Develop policy and standards for determining school district compliance, including establishing reference points for noncompliance.**
- D. Modify policy to clearly describe actions to take when monitoring specialists question school district eligibility determinations.**

Autonomy Exists in the Monitoring Process

During our audit, we noted OPI personnel operate autonomously and supervision is limited. In addition, policies and procedures to guide OPI personnel during the monitoring process are limited. As a result, there are variations in procedures used by staff for compliance monitoring. Various sections throughout this report note the inconsistencies we identified during our audit.

More Guidance is Needed

More guidance, in the form of supervision, will help improve consistency. Supervision is a three-step process: 1) establishing standards via policies and procedures, 2) measuring performance against established standards, and 3) correcting deviations from established standards. Various recommendations throughout this report address specific development of policy. However, establishing policies and procedures is only step 1 of the process. There must be oversight of ongoing activities to ensure policies are being followed (step 2), and procedures for correcting actions when deviations are identified (step 3). Having policies and making sure

Chapter V - Post-Site Compliance Monitoring Activities

they are followed will help ensure consistency in operations. This is especially important due to OPI's use of part-time employees.

Increasing consistency in operations has advantages. For example, setting and following standards for compliance removes the need for OPI personnel to make the same decision time and time again. Providing clarity for school districts is another advantage. OPI monitoring specialists rotate visits to school districts across Montana, so eliminating differences in procedures will help increase consistency. Increases in consistency will help ensure OPI compliance actions are applied consistently across the state.

Management Direction and Supervision is Limited

Division management is responsible for oversight of monitoring personnel. Management has delegated monitoring responsibilities to staff. Based on our observations, the only regular involvement management has in day-to-day compliance monitoring is attendance at division debriefings, and this is not consistent. Management also occasionally accompanies monitoring personnel on on-site monitoring visits, but not on a regular basis. While management is knowledgeable regarding special education, there is no ongoing review of day-to-day staff actions and procedures.

Approximately three FTE (five individuals) act as lead monitoring specialists during on-site visits, and these individuals are knowledgeable regarding special education. However, there is no one staff person assigned supervisory responsibility. While each on-site monitoring visit has a lead monitor responsible for establishing a monitoring team, this does not include supervisory authority. Combining this with the lack of policies and procedures to help guide personnel created a situation in which individuals develop their own methods of conducting business.

Division managers believe general procedures, processes, and outcomes are all consistent. According to managers, variations in procedures are due to the unique differences in Montana schools and school districts such as size, location, resources, etc. However, our observations indicate variations in monitoring practices are not

Chapter V - Post-Site Compliance Monitoring Activities

connected to school district demographics; rather, they relate to lack of guidance to direct staff.

Recommendation #5

We recommend OPI strengthen the monitoring process by:

- A. Designating a supervisor with responsibility for oversight of day-to-day staff activities.**
- B. Reviewing staff procedures to ensure adherence to established policies and procedures.**

Chapter VI – Special Education Documentation

Overview

Documentation is an important component of any program. There are numerous forms used by school districts that must be monitored by Office of Public Instruction (OPI) personnel. Standardizing a set of forms for use statewide will help increase consistency and reduce confusion. In addition, OPI should revise or eliminate some in-house developed forms.

Introduction

Documentation is an important part of the monitoring process, both documentation maintained in student records, as well as documentation maintained by OPI. Student records contain numerous documents including referrals, assessments, evaluation plans, child study team (CST) reports, and individualized education programs (IEP). OPI has forms available for use by school districts, as well as forms to document compliance monitoring.

OPI, via federal regulation, requires school districts to provide documentation of decisions to indicate compliance with regulations. Montana statutes direct the Superintendent of Public Instruction to supervise and coordinate the conduct of special education in the state by establishing a planned and coordinated program, and administrative rules indicate OPI shall provide an ongoing and systematic monitoring process to ensure compliance with IDEA and state laws and rules.

Standardization of Forms

School districts are responsible for developing and maintaining documentation related to special education. OPI monitoring specialists review student records to check compliance with regulations. While federal and state regulations require specific actions to be completed throughout the process, they do not require use of specific forms. For example, an IEP is required for every child with a disability receiving special education, but the form the IEP is documented on is left up to the school district. As a result, there is no consistency statewide in use of forms. There are differences between districts, within districts, within schools, and even within individual student records. Currently, there are various versions of forms being used by school districts including:

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- ▶ OPI - OPI developed a set of forms for use by school districts. These forms are printable and are available via the OPI website.
- ▶ District - some school districts create their own forms to use to document student records.
- ▶ Montana Forms - this is a system for special education developed by a Montana school district Director of Special Education and available to school districts free of charge.
- ▶ Private - some school districts contract with private businesses to create special education systems, which includes forms.

Standardization Will Help School Districts

District personnel indicate a desire to have consistent forms statewide, including having electronic forms. Children with disabilities may move between schools and between school districts. The student record stays with the child, so the record is transferred if the child moves. Standardization of forms statewide would make the transition easier for school district personnel because documentation would be the same. Personnel would know exactly what documents to expect and where to locate information within those documents. Standardization should also help by decreasing noncompliance resulting from the existence of numerous versions of forms.

According to OPI personnel, mandating use of standard forms has not occurred due to a reluctance to dictate to the local level. It is not common practice for OPI to mandate to school districts; rather, school districts are allowed local control. The availability of various resources provides more options for school districts. Use of private or in-house systems increases local control over documentation. Montana Forms is used because it is free and it is electronic which saves time when creating documents, and it may even have some data management capabilities. In comparison, OPI forms must be printed and completed by hand. Additionally, OPI personnel indicate form changes for school districts can be lengthy and costly.

OPI Should Mandate Standard Forms Statewide

OPI should mandate use of a standard set of special education forms statewide. Regulations have specific requirements and OPI has developed forms with required elements, so we believe mandating a standard set of forms is a logical next step. OPI should consider all the forms currently available to build on what already exists. A

Chapter VI – Special Education Documentation

possibility is creation of an OPI system that includes an electronic data management component. OPI received funding during the 2005 Legislative Session to develop a new student information system, which will include an electronic IEP system. Division management estimates the components of this new system will be in place for the 2006-07 school year. OPI could coordinate the development of this system with standardization of forms.

Recommendation #6

We recommend OPI mandate use of a standard set of forms statewide.

Student Record Review Form

OPI personnel created a form to document the compliance review of student records called the student record review form. Each OPI monitoring specialist completes a student record review form for each student record reviewed. The form has a “yes”, “no”, “not applicable” checkbox format.

There are Inconsistencies in Form Completion

The student record review form does not provide clear direction to OPI personnel on proper completion. As part of our review of student records at school districts, we used OPI’s form to conduct our own review of student records. We noted inconsistencies in completion, blanks, and some items are in addition to requirements in regulations. For example, the form asks OPI monitoring specialists to see if documentation indicates how teachers will be informed of responsibilities, but law or rule does not require this.

Comparison of Student Record Reviews Indicated Differences

Comparing our record reviews findings to the findings of OPI monitoring specialists indicated differences in completion. The following list indicates some of our observations:

- ▶ Blanks (item not checked) - Observed for both full-time and part-time OPI staff. Missing data causes the lead monitoring specialist to not include the results for those items in the final compilation of findings.
- ▶ Differences of Opinion - Variations in how OPI personnel evaluated the record. For example, annual goals being measurable or not.

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- ▶ Consistency - Inconsistent marking of non-applicable sections, which could lead to not including the answer in the results.
- ▶ Format - The form is set up to provide one answer (yes, no, or n/a) but some items have the potential for more than one answer, so the decision may not be clear. For example, there can be more than one measurable annual goal, so if there are four total and two are measurable and two are not, what should the decision be: yes or no?
- ▶ Confusion - Some areas on the form can lead to confusion with record review compilation, such as having three different areas requiring input on review of existing evaluation data.
- ▶ Severity - OPI reviewers mark noncompliance if forms indicate reports are attached, but the documents are not physically attached to the form, or if the pages of a particular document, such as the CST report, are not sequentially numbered.

Guidance Does Not Exist

The purpose of a policy is to provide direction. Procedures are guidelines that list steps for employees to follow in addressing a particular policy. The more policies are carefully developed and clearly understood, the more consistent and effective actions will be. In addition, OPI monitoring specialists complete the record review forms individually, and supervision is limited. One OPI monitoring specialist recently started checking student record review forms for completeness. Based on our observations, this new procedure may not be completely effective because missing data was noted on record review forms in which the new procedure was used.

According to division management, this new procedure was adopted, after our audit, as part of the monitoring methodology. This new procedure involves monitoring specialists double-checking each other's forms for completeness. While this is a positive step toward form completion, OPI personnel still need guidance for completing the student record review form. The monitoring process should be modified to include supervisory oversight of form completion.

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Recommendation #7

We recommend OPI:

- A. Develop policy to clarify how the student record review form should be completed.**
- B. Implement an ongoing supervisory review component to ensure consistency and completeness of the form.**

Review of Existing Evaluation Data

According to federal law, whenever a CST meets to determine if a child is or continues to be a child with a disability and in need of special education and related services, the team must review any existing evaluation data as part of the process. This CST review is referred to by OPI as the REED. The REED is conducted in order to determine if additional data is necessary to make the decision. Based on this federal requirement, OPI personnel developed the REED form to document the CST review. However, federal and state law and rules do not require the REED form, only the CST review.

Lack of REED Form Sometimes Results in Noncompliance

While the REED form is not required, based on our observations, OPI monitoring specialists frequently issue a finding of noncompliance if the form is not contained in student records. For recent monitoring reports, REED issues were identified in 55 percent of the reports. During our review of student records, even though the REED form was not in all the records we reviewed, we were able to determine, in most instances, based on other record documentation, that a review of existing evaluation data was conducted and the team's decision was that more data were needed.

Need for REED Form is Questionable

Based on our observations and input from school district personnel, some school districts are simply completing the form because they were told to. The form does not appear to add any useful information to the process and/or record. School district personnel are frustrated with having to complete the REED form and some said they would like to see the REED form eliminated. District personnel indicated there is already too much paperwork and about 32 percent of our survey respondents said documentation requirements go beyond regulations. In addition, the existence of the REED form in

Chapter VI – Special Education Documentation

the student record does not prove a review of existing evaluation data was actually conducted. Management said even with the REED form, it is not uncommon to see a school district's process not meet the review requirements. This indicates the REED form is not ensuring compliance with the requirement.

Recommendation #8

We recommend OPI:

- A. Develop policy to guide staff on analyzing student records to determine if proper documentation exists regarding the REED.**
- B. Eliminate the REED form.**

Appendix A

Management Memorandums

During the audit, we identified issues related to special education services we believe warrant management attention but are not the subject of recommendations in this report. We presented the following suggestions to department management:

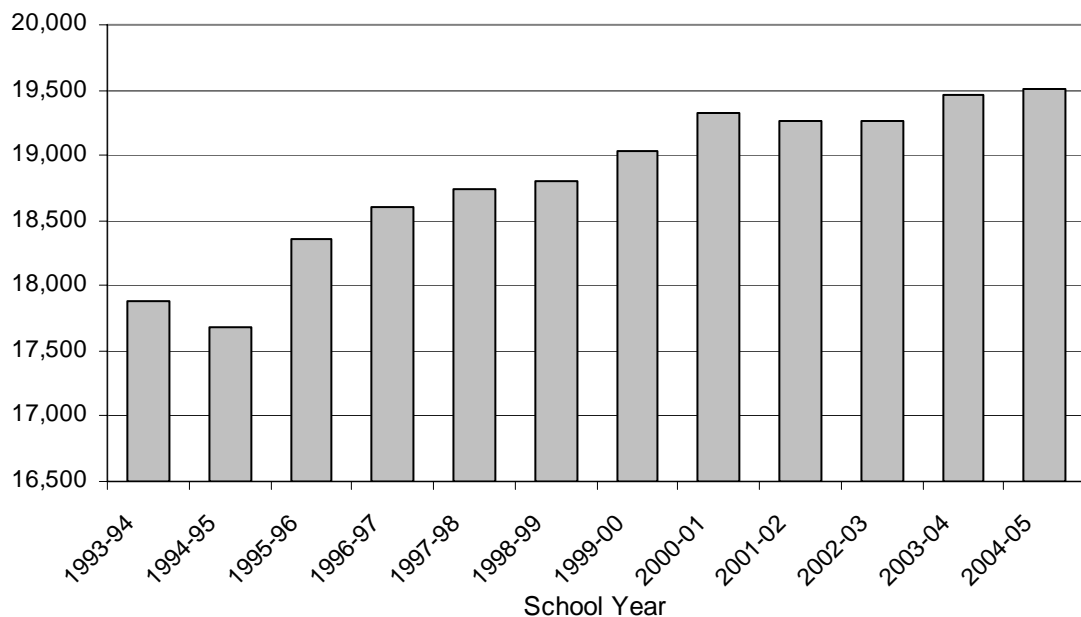
- ▶ Website Management. The special education Internet web pages contain a large volume of information including program descriptions, reports, forms, guides, regulations, fiscal data, and links to other web pages. We noted documents online that were not the most current version of documents we obtained in hardcopy. We also obtained input from school district personnel indicating difficulties in locating specific data due to the large volume of information on the website. OPI should evaluate its current website management process to ensure data is up-to-date and organization is effective and user friendly.
- ▶ Teleconference Versus Classroom Training. OPI personnel provide technical assistance and training to school districts. Much of this training is done via video and/or teleconferences in order to increase access to more school districts. While our survey results indicate a majority of respondents believe training provided is relevant, input from school district personnel indicated a desire for more training “in the classroom.” OPI managers may want to reevaluate the current balance of teleconferences compared to in the classroom observations and interaction.

Appendix B

Children with Disabilities

Currently, special education programs in Montana serve approximately 19,516 children with disabilities ages 3 to 21, which is 13 percent of total student enrollment. Over the past 12 years, special education enrollment has increased by two percent. According to division management, this increase can be attributed to improved identification processes, an increased number of disability categories, and broadened eligibility criteria for special education. In other words, school districts are identifying more students as special education eligible. Nationally, Montana ranks below the average for percentage of students served under IDEA. The following figure provides special education population figures (Child Count) for the past 12 school years.

Figure 2
Special Education Child Count
(1993-94 through 2004-05)



Source: Compiled by the Legislative Audit Division from OPI records.

Appendix B – Children with Disabilities

Disability Categories

There are various disability categories within special education. For school year 2004-05, the highest percentage category was learning disability. According to administrative rule, the criteria for learning disabled is:

"The student's rate of achievement relative to the student's age and ability levels remains below expectations and the student does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in (1)(b); and (b) The student has a severe discrepancy between the student's intellectual ability and achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, mathematics reasoning."

Federal regulations also contain specific requirements for evaluating children with specific learning disabilities. The following figure provides a breakdown by disability category for Montana's special education population for school year 2004-05.

Appendix B – Children with Disabilities

Table 2

Disability Category Breakdown

(2004-05 School Year)

Dominant Disability	Number of Children	Percentage of Population
Learning Disability	9,308	47.70%
Speech-Language Impairment	4,449	22.80%
Other Health Impairment	1,613	8.27%
Cognitive Delay	1,085	5.56%
Emotional Disturbance	1,008	5.17%
Child with Disabilities	799	4.09%
Multiple Disabilities	577	2.96%
Autism	275	1.41%
Hearing Impairment	149	0.76%
Orthopedic Impairment	71	0.36%
Traumatic Brain Injury	70	0.36%
Visual Impairment	61	0.31%
Deafness	44	0.23%
Deaf-Blindness	6	0.03%
TOTAL	19,515	100.00%

Source: Compiled by the Legislative Audit Division from OPI records.

The following map highlights the percent of special education population versus general education population per county as of December 2004.

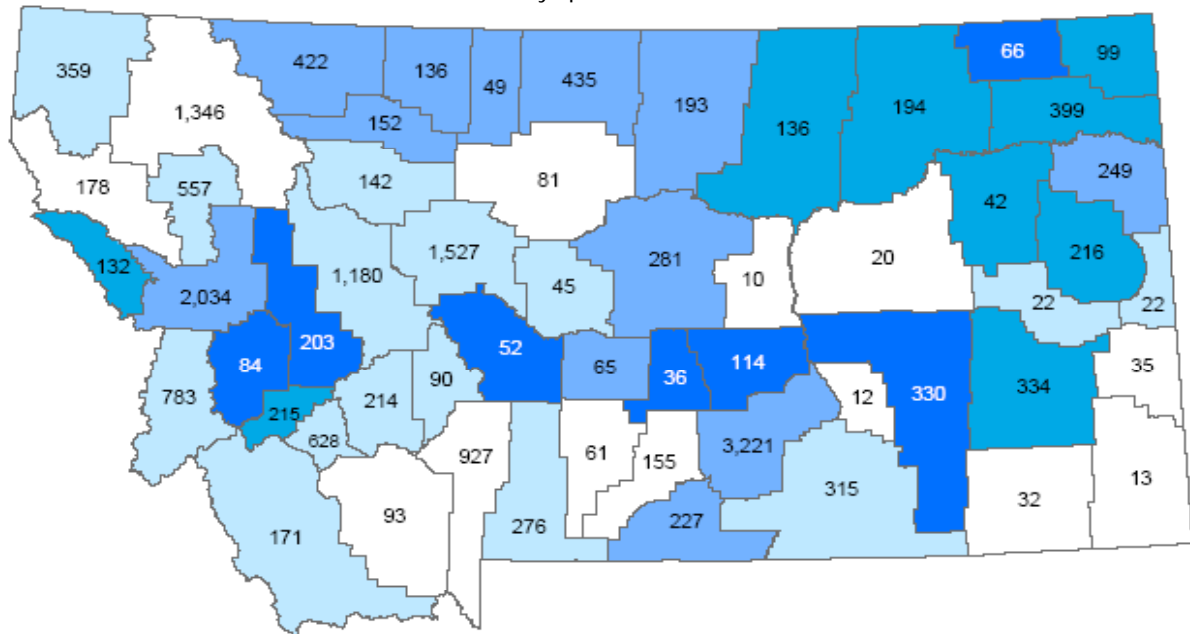
Appendix B – Children with Disabilities

Figure 3

Montana's Special Education Population Per County

(December 2004)

Numeric values show county special education enrollment total.



County Special Education Population Percentages



Source: Compiled by the Legislative Audit Division from OPI records.

Agency Response



— Montana Office of Public Instruction —

Linda McCulloch
State Superintendent

November 17, 2005

RECEIVED

NOV 17 2005

LEGISLATIVE AUDIT DIV

Scott A. Seacat
Legislative Auditor
Legislative Audit Division
PO Box 201705
Helena, MT 59620-1705

Regarding: Official Response from the Office of Public Instruction Concerning the Oversight of Special Education Services Performance Audit Dated December 2005.

Dear Mr. Seacat:

The Office of Public Instruction (OPI) has reviewed the Oversight of Special Education Services performance audit completed by the Legislative Audit Division. We appreciate the level of effort and professionalism of the staff of the Audit Division in preparing this report. Staff of the Audit Division visited our schools, interviewed OPI staff, observed technical assistance and training programs, and provided numerous opportunities for management to discuss issues and concerns.

As we have previously discussed, the OPI implements a comprehensive system of general supervision that includes: review of the Individuals with Disabilities Education Act (IDEA) Part B applicants' policies and procedures to ensure consistency with IDEA Part B requirements; implementation of procedures for formal complaints and due process hearings and mediation; provision of an Early Assistance Program to resolve issues prior to their becoming formal complaints or going to due process; implementation of a compliance monitoring process based on a five-year cycle and implementation of a focused intervention system based on selected performance indicators. The program audit conducted by the auditors focused on one aspect of the overall general supervision activities conducted by our office. The audit provided recommendations for the compliance monitoring portion of the system for general supervision.

The overarching theme of the recommendations contained in this audit report addresses the need for improved consistency in the implementation of special education compliance monitoring. We concur with the recommendations and believe that implementation of the recommendations will improve both the consistency and accuracy of our work. Unless otherwise stated, changes in policy or procedure suggested in the recommendations will be implemented effective with the 2006-2007 school year.

The IDEA was reauthorized by Congress on December 3, 2004, and the United States Department of Education is currently in the process of establishing implementing regulations. It is anticipated that final federal regulations will be adopted within the next six months. Following the adoption of federal regulations, the OPI will revise state administrative rules to comport with the new requirements of federal regulation. The sequence and length of the regulatory processes

may impact the time lines proposed for completion of some of the recommendations contained in this report.

Recommendations:

(1)

We recommend OPI:

- A. *Establish specific details of sample selection to help ensure the requirements of IDEA are met, including purpose, coverage, and types of records to review.*
- B. *Establish controls over pre-selection of student records.*
- C. *Incorporate previous monitoring findings and district comparisons into the sampling process to help assess current compliance.*

Response: **Concur**

The OPI will clarify policies to specifically detail sample selection procedures. These policies will be consistent with the current practice of judgmental sampling that places a priority on the selection of records that are at high risk of noncompliance and those that are required to address the state's performance indicators. Time lines for the pre-selection of student records will be established to allow districts only the amount of time necessary to gather the records for review. Compliance reviews will also incorporate findings of noncompliance from a district's previous monitoring and district comparisons into the records sampling process.

Clarification of policy concerning the use of judgmental sampling will coincide with the adoption of a revised state plan to implement IDEA 2004.

(2)

We recommend OPI ensure the appropriateness of all school district eligibility determinations.

Response: **Concur**

The OPI will clarify procedures and provide training to monitoring staff to ensure that established procedures are followed when a student's record does not properly address all of the criteria for eligibility determination.

(3)

As part of the on-site monitoring process, we recommend OPI determine if proper procedures were followed and criteria addressed for school district eligibility determinations for ineligible children.

Response: **Concur**

The OPI will revise procedures to include a selective review of records of students who were evaluated and determined to be ineligible for special education. The purpose of this selective review is to ensure proper procedures are followed in the identification of students with disabilities.

(4)

We recommend OPI:

- A. Formalize the division debriefing meeting.*
- B. Develop a standardized methodology for compiling results of on-site record reviews.*
- C. Develop policy and standards for determining school district compliance, including establishing reference points for noncompliance.*
- D. Modify policy to clearly describe actions to take when monitoring specialists question school district eligibility determinations.*

Response: **Concur**

The OPI will review its internal operating procedures and practices to establish a more structured debriefing meeting, a system for compiling results of on-site record reviews, adopting guidelines that more clearly establish standards for determinations of compliance, and specifically describe procedures to follow when student records do not clearly address all criteria for special education eligibility determinations. The Montana Special Education Compliance Monitoring Process guide will be revised to reflect these changes in operating procedures and practices. These revisions will include a protocol to assist staff in compiling results of record reviews.

(5)

We recommend OPI strengthen the monitoring process by:

- A. Designating a supervisor with responsibility for oversight of day-to-day staff activities.*
- B. Reviewing staff procedures to ensure adherence to established policies and procedures.*

Response: **Concur**

The OPI will review its organizational structure and staff assignments to ensure oversight of day-to-day staff activities and adherence to established policies and procedures.

(6)

We recommend OPI mandate use of a standard set of forms statewide.

Response: **Concur**

The OPI will mandate the use of a standard set of forms for statewide use concurrent with the full implementation of an electronic student information system. The 2005 Montana Legislature included an appropriation for the OPI to develop an electronic student information system. The request for proposals (RFP) to implement an electronic student information system includes a fully integrated Special Education Records Information Management System (SERIMS). The SERIMS system contains all special education student records and specific special education student demographic information.

(7)

We recommend OPI:

- A. Develop a policy to clarify how the student record review form should be completed.*
- B. Implement an ongoing supervisory review component to ensure consistency and completeness of the form.*

Response: **Concur**

The OPI will develop a supporting document to the record review form to improve consistency in completion of the form. Monitoring staff will utilize this document to improve consistency in interpreting requirements of various components of the record review. Ongoing supervisory review will be implemented and procedures established to ensure consistency and completeness of the form

(8)

We recommend OPI:

- A. Develop policy to guide staff on analyzing student records to determine if proper documentation exists regarding the REED.*
- B. Eliminate the REED form.*

Response: **Concur**

A review of existing evaluation data is required by the IDEA. The Review of Existing Evaluation Data (REED) form was designed to support school district efforts to document that the review occurred. Neither state nor federal law requires a particular form to be used when documenting compliance with this provision. The OPI staff will review alternative means of documenting the review of existing evaluation data and incorporate the requirements into other existing form(s). Policies will be developed to guide staff when conducting record reviews covering this component. The REED form will be eliminated after school district staff have received training on the substitute means for documenting compliance with this requirement.

Please contact me if you have questions concerning this response.

Sincerely,

A handwritten signature in cursive script, reading "Linda McCulloch".

Linda McCulloch
State Superintendent

c: Bob Runkel